

Electronic Arbitration Rules and Dispute Resolution for Civil and Commercial Contracts

Monther Abdulkarim Ahmad Alqudah¹,
Atef Salem Al Awamleh²,
Abdel-Kareem Ottallh Al- Karabsheh³,
& Asm'a Mohammed Al Raggad⁴

Abstract

This study aimed to explore the provisions related to the rules of electronic arbitration and the resolution of civil and commercial contract disputes through various arbitration institutions. The motivation behind the study stems from the fact that we are currently in a new era dominated by the information society. With the widespread use of information and communication technologies for conducting electronic work, forming contracts, and executing them via the Internet, attention shifted to utilizing these technologies for resolving disputes arising from these activities. This means that the dispute resolution process occurs through electronic media networks, eliminating the need for all parties to be physically present in one location. The study also reviewed the significant developments in electronic arbitration rules over recent years. It concluded that electronic arbitration emerged in commercial and civil matters, with specific laws being enacted to support it due to its positive impact on promoting domestic and international trade and investment, ultimately benefiting the economies of countries.

Keywords: Arbitration, Electronic, Contracts, Disputes, Civil and Commercial.

Introduction

E-Commerce is one of the most significant economic activities globally, driven by advancements in modern communication technologies. However, its rapid growth has led to an increase in disputes arising from e-commerce transactions (Kshetri, 2018).

Arbitration serves as an alternative mechanism to traditional judiciary processes for resolving commercial disputes. It is particularly prevalent in

¹ Dr. Monther Abdulkarim Ahmad Alqudah, Associate Professor, Amman Arab University-Jordan. Email: Monther_alkodah@yahoo.com ORCID: <https://orcid.org/0000-0001-5773-8792>

² Dr. Atef Salem Al Awamleh (Corresponding author), Associate Professor Faculty of Law, Al-Balqa' Applied University-Jordan Email: Dr.atefalawamleh@bau.edu.jo ORCID: <https://orcid.org/0009-0001-9061-4289>

³ Dr. Abdel-Kareem Ottallh Al- Karabsheh, Associate professor Faculty of Law, Al-Balqa' Applied University-Jordan Email: dr.abed1979@bau.edu.jo ORCID: <https://orcid.org/0000-0001-8842-6425>

⁴ Dr. Asm'a Mohammed Al Raggad, Associate professor Faculty of Law, Al-Balqa' Applied University-Jordan Email: Dr.asma@bau.edu.jo ORCID: <https://orcid.org/0000-0002-1428-4265>

international contracts, where it is uncommon to find agreements that lack an arbitration clause to address potential disagreements. Here, arbitration refers to voluntary arbitration, in which parties to a commercial contract mutually agree to resolve current or future disputes arising from their contractual relationship through arbitration (Moses, 2017).

In essence, arbitration represents a mutual agreement between two or more parties to forgo traditional judicial proceedings and instead submit their dispute to an arbitrator. Specifically, it involves an arrangement between parties to resolve disputes whether arising from contractual or non-contractual legal relationships through arbitration by one or more individuals they have selected. The arbitrator's decision is binding and resolves the conflict based on the agreed-upon governing law, location, language, and timeframe (Born, 2021).

Electronic arbitration derives its importance from the advantages it achieves as a method for resolving disputes, especially those arising from e-commerce. Some of these advantages are shared by electronic arbitration with traditional arbitration. Also, some of them are considered advantages unique to electronic arbitration. These advantages are often attributed to the electronic means through which electronic arbitration is conducted. However, electronic arbitration has some disadvantages, and these disadvantages are attributed, as are the advantages, to the electronic medium through which electronic arbitration is conducted (Hesham, 2011).

The idea of electronic arbitration emerged as an exclusive method for resolving disputes that arise as a result of using the Internet in electronic transactions. This is compared to other methods of resolving disputes such as electronic negotiations and electronic mediation. This arbitration allows the use of electronic technologies without the need for the parties to move or be present at the place of arbitration. There is now a real need to organize agreements, enact new laws and regulations. It is a need to set objective and personal standards to organize the rules of electronic arbitration in light of the complexities that the world is currently witnessing. This requires setting clear objective and formal standards to protect these rules. However, this may face a serious problem represented in the multiplicity and difference of laws in countries. It calls for clarifying the rules of electronic arbitration, their elements and nature, and the rights and obligations related to them, including the implementation of the arbitration decision. Thus, the importance of this study stems from the same importance that arbitration rules enjoy in the world today (Alsamara & Ghazi, 2024).

It also stems from the fact that it will contribute to highlighting a picture of the comprehensive rules of electronic arbitration. This will be done in a manner consistent with the requirements and needs of individuals, companies, and civil and commercial institutions. It aims to establish the legitimacy of the provisions related to electronic arbitration and its protection. Additionally, it seeks to organize the provisions related to electronic arbitration, promote innovative activities in this

field, and safeguard the rights associated with it. Finally, it will work towards establishing the provisions related to these rules (Alsamara & Ghazi, 2024).

Following up on the rules of electronic arbitration in various countries and defending them has become an urgent requirement for their owners. Here, the necessity of carrying out a study of electronic arbitration and the rights related to it emerges.

Research questions

1. What is the significance of regulating the provisions of electronic arbitration for resolving civil and commercial disputes?
2. How crucial is the need for new laws, agreements, and regulations to govern electronic arbitration?
3. What are the key principles and foundations for settling civil and commercial disputes under electronic arbitration rules?

Thus, the current study seeks to achieve a set of objectives, the most prominent of which are:

1. To clarify the concept and scope of electronic arbitration.
2. To identify the importance and advantages of electronic arbitration in resolving civil and commercial disputes.
3. To explore the challenges related to conflict of laws and jurisdiction in the context of electronic arbitration and propose solutions.

Theoretical Framework

Electronic arbitration, as an alternative dispute resolution (ADR) mechanism, shares many similarities with traditional arbitration in providing parties with a method to resolve disputes outside the court system. It involves an agreement between parties to submit disputes whether arising from a contractual or non-contractual legal relationship to an arbitrator or arbitration institution (Al-Talabi et al., 2011; Al-Baqli, 2008; Hesham, 2011). The defining characteristic of electronic arbitration is its use of internet-based procedures, which allow remote participation without the necessity for physical presence (Al-Yassin, 2007 and Abu Al-Haija, 2002). This feature provides flexibility and convenience, particularly in the fast-moving context of e-commerce, where disputes can arise swiftly and often involve parties from different jurisdictions (Hesham, 2011 and Al-Qarni, 2017)

In electronic arbitration, disputes are generally resolved through an arbitration body that conducts proceedings electronically. These proceedings use electronic communication channels such as email, video conferencing, or other online platforms, facilitating rapid interaction and document exchange (Al-Yassin, 2007 and Al-Qarni, 2017). Arbitration can be carried out entirely online, or it can integrate traditional methods where physical presence is required during specific stages (Al-Qarni, 2017 and Hesham, 2011). This hybrid model allows for flexibility while adhering to established arbitration procedures (Mamdouh, 2017)

The scope of electronic arbitration spans across various sectors, including information systems, technology, applied computing, and e-commerce transactions in both the private and public sectors. Its procedures are specifically designed to address the complexities of digital transactions (Al-Qarni, 2017).

One of the most important advantages of electronic arbitration is its speed and efficiency, which contrasts with the slow procedures and backlogs often encountered in traditional court systems (Abu Al-Haija, 2002 and Mamdouh, 2017). This rapid resolution is particularly critical in e-commerce, where the quick settlement of disputes can help maintain business operations and prevent financial losses (Al-Qarni, 2017 and Hesham, 2011)

Cost-effectiveness is another key benefit of electronic arbitration. Traditional arbitration can incur substantial expenses, including travel and accommodation costs for parties and arbitrators. Those are greatly reduced in electronic arbitration, as participants can engage in proceedings from any location with internet access (Al-Qarni, 2017 and Hesham, 2011). Moreover, electronic arbitration ensures the confidentiality of proceedings, which is essential in commercial and e-commerce disputes involving sensitive information (Al-Jiyashi, 2021 and Abu Al-Haija, 2002). The secure environment provided by electronic platforms also minimizes the risks of data breaches or unauthorized access (Al-Qarni, 2017 and Al-Jiyashi, 2021)

The speed and efficiency of electronic arbitration also address common challenges found in traditional legal systems, such as determining jurisdiction and applicable law in international disputes. Due to the global nature of the internet, electronic arbitration offers a neutral and accessible platform for dispute resolution (Al-Naimi, 2009 and Muqabla, 2009). The New York Convention on the Recognition and Enforcement of Arbitral Awards (1958) ensures that arbitration decisions are recognized internationally, adding to the credibility and enforceability of electronic arbitration rulings (Al-Naimi, 2009 and Badawi, 2009). However, challenges remain in ensuring the legal expertise of arbitrators, especially in the digital realm, and addressing concerns about the security of online platforms (Hesham, 2011 and Al-Jiyashi, 2021)

In conclusion, electronic arbitration provides a faster, more cost-effective and convenient alternative to traditional dispute resolution methods, especially in the realm of e-commerce. It ensures confidentiality and global enforceability of decisions, addressing the demands of the digital economy (Abu Al-Haija, 2002 and Al-Qarni, 2017). While challenges related to specialized knowledge and security remain, electronic arbitration continues to evolve, adapting to the growing needs of the digital marketplace (Al-Qarni, 2017 and Mamdouh, 2017).

Research Methods

This study adhered to scientific research methods based on tracking information and data from their sources and classifying them to reach the required

research results. Therefore, this study was based on multiple scientific methodologies. To this end, the researcher followed the various known scientific research methods, including:

1. The inductive method: by inducting, tracking information, and data from their original sources.
2. The analytical method: by collecting, analyzing, and classifying information, following up on issues and provisions related to the subject of the study.
3. The descriptive method: by describing the conditions, that electronic arbitration went through in general, and the foundations and provisions related to them.

Results and Discussion

Upon examining the regulations governing electronic arbitration, it becomes evident that most laws regulate arbitration provisions in general, particularly concerning the formalities of the arbitration agreement. One common requirement is that the arbitration agreement must be in writing. However, there is a lack of consensus among these laws regarding the role of formality in the arbitration agreement. For instance, some legal frameworks, such as the Egyptian Arbitration Law, regard writing as a condition for the validity of the arbitration agreement, while others see it as merely necessary to prove the existence of the agreement. In traditional arbitration, writing is the only formal condition that must be satisfied (El-Kosheri, 2009).

In contrast, electronic arbitration, due to the absence of specific legal provisions addressing it, is subject to the same general rules governing arbitration. This means that the same formal requirements that apply to arbitration agreements must be met in electronic arbitration. If writing is the required form, the nature of writing must first be defined, and then its application in the context of electronic arbitration agreements must be assessed (Al-Jiyashi, 2021).

The variation in national laws regarding the extent to which electronic messages fulfill the writing requirement. This may present challenges when it comes to enforcing electronic arbitration awards in jurisdictions that do not recognize the expanded interpretation of writing. This has led international organizations to make efforts to harmonize this issue. For example, the UNCITRAL Commission's draft development of the International Commercial Arbitration Law stipulates that an arbitration agreement must be in writing. However, writing is defined broadly to include any form that provides a tangible record of the agreement or is accessible as a data message, allowing it to be referenced at a later time. This broader interpretation of writing aims to facilitate the use of electronic arbitration in international commercial contexts. This suggests that arbitration agreements can be concluded through methods other than traditional paper documents, such as electronic communications (Al-Shuraidah, 2020, p. 33).

The fundamental elements of electronic arbitration are similar to those of traditional arbitration, including the necessity for consent, a defined subject matter,

and a valid reason. However, when it comes to electronic arbitration in the context of electronic commerce, the conditions may require some specificity, particularly in how the parties' intentions are expressed electronically.

For electronic arbitration to be valid, both parties must mutually agree to accept it as a means of resolving any existing or potential disputes. This agreement is typically expressed explicitly and directly. Additionally, the parties' consent must be free, genuine, and devoid of any defects, such as coercion, mistake, fraud, misrepresentation, or undue influence (Al-Haddad, 2007, p. 357).

Since the electronic arbitration agreement is concluded through electronic means, specifically the Internet, the expression of the parties' will is conveyed via this medium. The offer is made through the Internet, and acceptance is received in the same way. For example, a commercial company may publish the terms of its contract, including the arbitration clause, on its website. A potential contracting party need only press an acceptance or approval button to conclude the contract and convey their consent. In this case, both the offer and acceptance are made via the Internet, which aligns with general legal principles allowing the expression of will in various forms. Willingness can be expressed verbally, in writing, through customary gestures, or through actions that clearly indicate consent, even if those actions are non-verbal (Al-Qudhah, 2018, p. 50).

However, expressing consent to resort to electronic arbitration via the Internet raises concerns regarding proof of consent, which necessitates the use of technical measures to ensure that the consent is correctly attributed to the party expressing it. As a result, legislation has made it mandatory for electronic contracts, including electronic arbitration agreements, to be accompanied by an electronic signature (Abu Heiba, 2003, p. 427). This is useful to order and validate the agreement and confirm the party's consent to use electronic arbitration as a dispute resolution mechanism. This requirement also serves to foster trust in electronic transactions.

Verifying the identity of parties in electronic contracts is a significant technical issue. Statistics show that 28% of website visitors provide false personal information, which further complicates the verification process. To address this, third-party entities known as certification service providers have been introduced. These providers play a crucial role in confirming the legitimacy of the contracting party by ensuring the accurate transmission of data in electronic documents within the virtual environment. These certification service providers are accredited or recognized entities responsible for issuing electronic certificates and signatures (Verbiest, 2004).

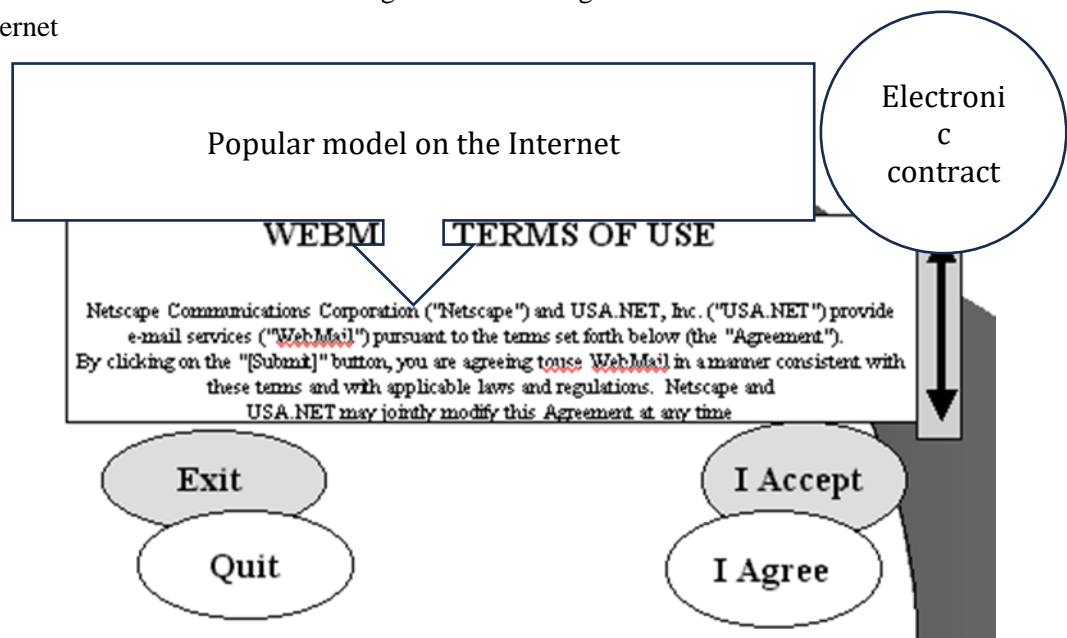
In order to verify the eligibility of the parties involved in electronic arbitration, a website offering such services should be designed in a way that mandates the party wishing to agree to electronic arbitration to disclose their identity and age. If the party fails to provide this information, they should not be allowed to proceed with the agreement. This requirement would help ensure the

credibility of the arbitration process and the resulting decisions (Jamal, 2007, p. 157). In terms of the dispute itself, it must be arbitral. Generally, contracting parties, particularly in international trade, enjoy considerable freedom in deciding which issues will be subject to arbitration. However, some jurisdictions impose certain restrictions on the types of disputes that can be arbitrated, specifying that certain matters are non-arbitral. This ensures that arbitration remains suitable only for particular kinds of disputes, while others may be reserved for judicial resolution due to their nature or importance in public law (Najjar, 2017).

One of the key limitations on electronic arbitration arises from consumer protection laws. These laws typically prevent agreements between merchants and consumers from determining the applicable law for their contract or any dispute arising from it. This restriction stems from the nature of remote contracts, where the absence of physical presence makes it difficult for either party to verify the other's eligibility or capacity to enter into the agreement. Additionally, the legislator aims to offer stronger legal protections to consumers, recognizing that consumers often enter into contracts with professional merchants, putting them at a disadvantage due to their lack of technical expertise in comparison to the merchant (Al-Qudhah, 2018, p. 55).

These consumer protection measures ensure that consumers are not unfairly bound by terms that might otherwise be imposed in an electronic arbitration agreement, where power imbalances between the parties could otherwise undermine the consumer's rights.

An illustrative model for the stages of concluding an electronic contract on the Internet



Source: Bou Bakour (2019, p. 23)

In a sense, electronic arbitration is defined as arbitration that can be conducted in general, or partially, via the Internet or other electronic means of communication. It is clear from the previous definition that the definition of electronic arbitration does not differ from traditional arbitration except through the means by which arbitration procedures are conducted in the virtual world. There is no paper, traditional writing, or physical presence of persons in this arbitration, even the rulings may be obtained by the parties signed and ready electronically (Al-Qudhah, 2018). Disputes related to e-commerce are increasingly being resolved through mediation, electronic conciliation, and electronic arbitration, thanks to various applications. This trend has been driven by specific initiatives from economic and regional organizations, along with professional unions focused on adapting to the fast-paced growth of electronic developments (Sulaiman, 2009, p. 86). The recommendations and decisions made by the European Union bodies and the efforts of WIPO are significant, the first practical implementation of electronic arbitration for e-commerce disputes is the Virtual Judge program. This initiative, an American concept, was established in March 1996 by professors from the Villa Nova Center for Law and Information Policy. It received support from the American Arbitrators Association (AAA), the Cyberspace Law Institute, and the National Center for Informatics Research in the United States (Beretta, R.2024).

The goal of this program is to offer rapid resolution of Internet-related disputes by using a mediator with expertise in arbitration, e-commerce laws, Internet law, trademark issues, intellectual property, and other relevant areas. The virtual judge, who is specialized in these matters, communicates with the disputing parties via email, with the dispute being resolved within 72 hours. However, it is important to note that the decision made by the judge is not legally binding unless both parties accept it. This service has been provided free of charge by the center (Beretta, R.2024).

As a result, the current study can be summarized as follows:

1. The issues related to electronic arbitration rules in most countries of the world have increased.
2. There is a need for development, construction and major steps by countries and organizations interested in the field of electronic arbitration.
3. There is still a need for international agreements and national legislation in order to recognize and regulate electronic arbitration centers and implement their rulings in different countries.
4. It is possible to benefit from the capabilities provided by the Internet and electronic means. This could be directed and used to complete the procedures of traditional methods of settling disputes. For example negotiation, mediation, conciliation and arbitration through this network.

Conclusion

Electronic arbitration is a means by which the disputed issue is settled. This issue is entrusted to one or more persons called the arbitrator or arbitrators, provided that they are neutral. We find from what we have reviewed about the current reality of electronic arbitration that it has become a reality in a world valuing hard work and development. These virtual centers and courts were established through academic efforts and the integration of legal and technical sectors focused on applying technology in line with continuous developments. Thus, they placed themselves in the midst of the virtual world and became, after their maturity, part of the legal system regulating it.

During the preparation of this scientific material, a large number of references were used, which the researcher referred to in the references section. They were a strong basis and support for this study, with the necessary modification, addition, or deletion to suit the methodology of this study without compromising the original scientific material.

Recommendations

The results of this study led to a number of recommendations, which we summarize as follows:

- It is necessary to establish the legitimacy of the provisions related to electronic arbitration and its protection, by codifying them in the form of legal articles.
- It is recommended to review the provisions related to regulating the provisions related to electronic arbitration by enacting new laws and regulations to protect these rules.
- It is necessary to amend the laws related to international commercial arbitration and the laws of implementing foreign judgments, and sign treaties related to these areas.

References

- Abu Al-Haija, M. (2002). *Arbitration via the Internet*, International Scientific House for Publishing and Distribution. Dar Al Thaqafa for Publishing and Distribution. Amman, Jordan.
- Abu Heiba, N. (2003). *Electronic signature: definition and the extent of its validity in proof*. Electronic Banking Conference between Sharia and Law, Faculty of Sharia and Law and Dubai Chamber of Commerce and Industry.
- Al-Baqli, H. (2008). *Electronic Arbitration as a Means of Settling Disputes*, The Egyptian Society for Combating Information and Internet Crimes, Egypt.
- Al-Haddad, H. (2007). *Summary of the general theory of international commercial arbitration*, Al-Halabi Legal Publications, Beirut, Lebanon.
- Al-Jiashi, A. (2021). *The legal system of electronic arbitration*, Code of Positive Laws, Morocco.
- Al-Naimi, A. (2009). The Legal Framework for the Electronic Arbitration Agreement, *Sharjah Journal of Sharia and Legal Sciences*, 6(2).
- Al-Qarni, A. (2017). Electronic Arbitration and Forensic Technology (1 of 2), *The Arab International Economic Newspaper*.
- Al-Qudhah, M. (2018). *Electronic Commerce Law (Electronic Contracts, Electronic Arbitration, Electronic Commerce Crimes, International Model Contracts*, Saudi Arabia, Al-Rashd Library.
- Al-Qudhah, M. (2018). *E-commerce (from a technical, economic and administrative perspective)*, Bright Horizons, UAE
- Al-Qudhah, M. (2018). *UAE e-commerce law Electronic contracts, Electronic signature, Electronic arbitration, E-commerce crimes with a brief explanation of the UAE e-commerce and transactions law, Federal Law No. (1) of 2006 and Federal Law No. 5 of 2012 regarding combating cybercrimes*, Bright Horizons, UAE.
- Alsamara, T., & Ghazi, F. (2024). The role of electronic arbitration in commercial dispute resolution. *Journal of Infrastructure, Policy and Development*, 8(9), 6119. <https://doi.org/10.24294/jipd.v8i9.6119>
- Al-Shuraidah, T. (2020). *The nature and procedures of electronic arbitration*, Ain Al-Jamia Library, Jordan
- Al-Talabi, W., Al-Hashemi, p., Naima, A., and Belmoumen, S. (2011). *Electronic arbitration: Its nature and procedures*. Hassan I University. Kingdom of Morocco.
- Al-Yassin, N. (2007). *The Legal System for the Protection of E-Commerce*, Ph.D. Thesis, Ain Shams University.
- Badawi, A. B. (2009). Interpretive Preferences and the Limits of the New Formalism. *Berkeley Bus. LJ*, 6, 1.
- Beretta, R. (2024). Procedural justice in online dispute resolution: an empirical enquiry (Doctoral dissertation, University of Antwerp).

- Born, G. (2021). *International Commercial Arbitration: Commentary and Materials*. BRILL.
- Boubakour, F. (2019). *E-commerce*, Hadj Lakhdar University, Batna - Faculty of Economics and Management Sciences, Algeria.
- El-Kosheri, A. (2009). *Arbitration in the Arab world: Developments and challenges*. Cairo University Press
- Hesham, B. (2011). *Electronic Arbitration Advantages and Disadvantages*, Al-Ahram Strategic File, published on the Arab Arbitrators website.
- Jamal, S. (2007). *Contracting via modern communication technologies*, Dar Al Nahda Al Arabiya, Cairo.
- Kshetri, N. (2018). Blockchain's roles in meeting key supply chain management objectives. *International Journal of Information Management*, 39, 80-89. <https://doi.org/10.1016/j.ijinfomgt.2017.12.005>
- Mamdouh, M., Sadek, R., El Ghaz, H., & El Far, Y. (2017, September). A new dynamic secured IEEE 802.11 e AES based system. In 2017 9th International Conference on Computational Intelligence and Communication Networks (CICN) (pp. 101-107). IEEE.
- Moses, M. L. (2017). *The principles and practice of international commercial arbitration* (3rd ed.). Cambridge University Press.
- Muqabla, N. (2009) *The Legal System of Electronic Information Services Contracts in Private International Law*, Dar Al-Thaqafa for Publishing and Distribution. Amman, Jordan.
- Najjar, N. (2017). *Arbitration and international trade in the Arab countries* (Vol. 13). Brill.
- Suleiman, H. (2009). *The role of electronic arbitration in resolving electronic commerce disputes*, Academy of Graduate Studies, Tripoli, Libya.
- Verbiest, T. (2004). *Commerce électronique: Le Nouveau cadre juridique: Publicité, contrats, Contentieux*. Larcier ; L.G.D.J.